

“HIDING SAR PENALTY LIMITS”
ONTARIO PROPERTY AND ENVIRONMENTAL RIGHTS ALLIANCE

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MEMO TO FILE:

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Contrary to original briefing documents regarding penalties for alleged violations of proposed SAR “adjustments”, MNR may be now hinting that some of those sanctions will be revised or never existed.

Its standard government practice to cloak proposed legislation in noble rhetoric followed, months or even years later when public interest and concern has long since faded away, with harsh regulations manufactured in the interim by unidentified bureaucrats. Thus penalties to be later imposed on alleged violators of Ontario’s Species at Risk Act can, at this point, only be inferred from documents pertaining to the legislative rather than the regulatory phase of the process. As usual, this manipulation of time and place provides MNR “spokespersons” with an opportunity to blur, excuse or deflect the whole question of SAR penalties. Nevertheless, the following verbatim excerpts from Section 9 of that proposed statute stand in worrisome contrast with MNR stick-handling currently being reported:

FROM Original SAR Discussion Paper issued by the MNR

Section 3 – Proposed Legislative Changes

Proposal 9 – Enforcement and Penalties

“ Although the maximum penalties for offences under the(Ontario) Act were increased in the 1990’s, they are still much lower than maximum penalties under the federal Species at Risk Act where the maximum penalty for an individual is \$250,000.00 or five years in jail and the maximum fine for corporations is \$ 1 million”.

First Item Legislative Proposal 9

The new legislative provisions would provide:

* stronger penalties, *in keeping with those jurisdictions with modernized legislation* (italics added)

FROM the Report of an Advisory Panel appointed by the MNR

Page 21, Item 10

Enforcement and Penalties

The Panel agrees with Legislative Proposal 9 and emphasizes that the offences under the legislation should be subject to a due diligence defense (the Defendant must prove innocence rather than requiring the State to prove guilt – a reversal of common law. Ed. Note) as is the case with other modern environmental/regulatory offence statutes. *The Minister may also wish to consider including administrative penalties in the Act similar to those recently put in place for other provincial environmental legislation.* (Italics added)

FROM a Consultation Summary issued by the Advisory Panel (198 responses – none identified)

Legislative Proposal 9

Enforcement and Penalties

Strongly Agree: 64.65%; Agree: 15.15% Strongly Disagree: 4.04%; Disagree: 10.61%

Overall, the submissions supported stronger penalties

NOTE:

Based on the direct quotations listed above, OPERA suggests that, if the maximum penalty for an individual convicted of allegedly violating Ontario’s SAR legislation will NOT be \$250,000.00 or 5 years in jail, MNR and its Advisory Panel should be compelled to publicly reveal the correct numbers as well as the author(s) and rationale of same prior to enactment of SAR legislation.